

Subpart D—Positions Restricted to Preference Eligibles

§ 330.401 Restricted positions.

Under 5 U.S.C. 3310, competitive examinations for the positions of custodian, elevator operator, guard, and messenger (referred to in this subpart as *restricted positions*) are restricted to preference eligibles as long as a preference eligible is available. For more information on these restricted positions, refer to the OPM Delegated Examining Operations Handbook.

§ 330.402 Exceptions to restriction.

(a) An agency may fill a restricted position with a nonpreference eligible under the following circumstances:

(1) By competitive examination when no preference eligible applies;

(2) By position change (promotion, demotion, or reassignment) to a position in the organizational entity (*i.e.*, the part of an agency from which selections are normally made for promotion or reassignment to the position in question) in which the nonpreference eligible is employed;

(3) By reemployment in the agency where the nonpreference eligible was formerly employed when he or she is being appointed from the Reemployment Priority List under subpart B of this part;

(4) By reinstatement in the agency where the nonpreference eligible was formerly employed when he or she was last separated because of disability retirement; or

(5) By reappointment of certain temporary employees as provided for in part 316 of this chapter.

(b) Except as indicated in paragraph (a) of this section, OPM must authorize any other agency noncompetitive action (e.g., under an authority specified in part 315 of this chapter) to fill a restricted position with a nonpreference eligible.

§ 330.403 Positions brought into the competitive service.

An agency may convert the appointment of a nonpreference eligible whose restricted position was brought into the competitive service under part 316 of this chapter, and who meets the requirements for conversion under part

315 of this chapter, to career or career conditional appointment.

§ 330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.

An individual agency and OPM both have additional responsibilities when the agency decides, in accordance with the Office of Management and Budget (OMB) Circular A-76, to contract out the work of a preference eligible who holds a restricted position. These additional responsibilities as described in §§ 330.405 and 330.406 are applicable if a preference eligible holds a competitive service position (other than in the Government Printing Office) that is:

(a) A restricted position as designated in 5 U.S.C. 3310 and § 330.401; and

(b) In tenure group I or II, as defined in § 351.501(b)(1) and (2) of this chapter.

§ 330.405 Agency placement assistance.

An agency that separates a preference eligible from a restricted position by reduction in force under part 351 of this chapter because of a contracting out situation covered in § 330.404 must, consistent with § 330.603, advise the employee of the opportunity to participate in available career transition programs. The agency is also responsible for:

(a) Applying OMB's policy directives on the preference eligible's right of first refusal for positions that are contracted out to the private sector; and

(b) Cooperating with State units as designated or created under title I of the Workforce Investment Act of 1998 to retrain displaced preference eligibles for other continuing positions.

§ 330.406 OPM placement assistance.

OPM's responsibilities include:

(a) Assisting agencies in operating positive placement programs, such as the Career Transition Assistance Plan, which is authorized by subpart F of this part;

(b) Providing interagency selection priority through the Interagency Career Transition Assistance Plan, which is authorized by subpart G of this part; and

(c) Encouraging cooperation between local Federal activities to assist these